

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

NIKKI BOLLINGER GRAE, Individually and on Behalf of All Others Similarly Situated,)	Civil Action No. 3:16-cv-02267
)	
Plaintiff,)	Honorable Aleta A. Trauger
)	
vs.)	Magistrate Judge Jeffrey S. Frensley
)	
CORRECTIONS CORPORATION OF)	
AMERICA, et al.,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL CERTAIN
CONFIDENTIAL DOCUMENTS IN CONNECTION WITH THEIR MOTION TO
EXCLUDE TESTIMONY OF SCOTT DALRYMPLE**

Pursuant to Rules 5.03 and 7.01 of the Civil Local Rules of Court and the Revised Stipulation and Protective Order entered in this case (Dkt. 86) (the "Protective Order"), Defendants respectfully request that the Court grant leave for Defendants to file under seal the Memorandum of Law and Exhibits 8, 12, and 14 to the Declaration of Morgan E. Whitworth ("Whitworth Decl.") filed in support of Defendants' Motion To Exclude Testimony of Scott Dalrymple.¹

First, Defendants seek leave to file Exhibits 12 and 14 fully under seal, as they have been designated Confidential by third-parties. Defendants also seek to file with limited redactions the Memorandum of Law, which includes a quote from Exhibit 14.

- **Exhibit 12** is a true and correct excerpted copy of the transcript from the deposition of Paul Kelly, which occurred on July 21, 2020.

¹ Defendants have concurrently filed a version of the Memorandum of Law with references to the confidential material redacted.

- **Exhibit 14** is a true and correct copy of an August 23, 2016 email from the BOP's Privatization Management Branch Administrator, Pamela Jones, to the BOP's Assistant Director for the Correctional Programs Division, Angela Dunbar, beginning with Bates stamp BOP_0148858.
- The Memorandum of Law quotes information contained in Exhibit 14.

Non-party witness Paul Kelly, a former BOP employee, designated his deposition transcript, an excerpted copy of which is filed at Exhibit 12, Confidential pursuant to the Protective Order. Exhibit 14 is designated Confidential by the BOP. Under the Protective Order, Defendants are required to “file[] under seal, redacted, or protected from public disclosure” any document that it submits to the Court and that reflects “Confidential Discovery Material.” Protective Order ¶12. As such, pending any motion from Mr. Kelly or the BOP to maintain the sealing, Defendants respectfully request that the Court permit Defendants to file these Exhibits fully under seal and a redacted version of the Memorandum of Law. As Exhibits 12 and 14 were designated Confidential in full, redactions would be impracticable.

Second, **Exhibit 8** is a true and correct excerpted copy of the transcript from the deposition of Donna Mellendick, which occurred on October 27, 2020. This exhibit contains descriptions of information contained in a document produced by the BOP, with Bates stamp BOP_0148858, that was designated “Source Selection Information”² pursuant to Federal Acquisition Regulation

² Material designated as Source Selection Information pursuant to the SSI Protective Order includes “any material that [the producing party] believes in good faith is protected by the Federal Acquisition Regulation or the Procurement Integrity Act, 41 U.S.C. §423, because it contains (i) bid prices submitted in response to a Federal agency invitation for sealed bids, or lists of those bid prices before public bid opening; (ii) proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices; (iii) source selection plans; (iv) technical evaluation plans; (v) technical evaluations of proposals; (vi) cost or price evaluations of proposals; (vii) competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract; (viii) rankings of bids, proposals or competitors; (ix) reports and evaluations of source selection panels, boards or advisory councils; or (x) other information marked as ‘Source Selection Information’ based on a case-by-case determination by

(“FAR”) sections 2.101 and 3.104. The FAR, among other things, prohibits the public disclosure of source selection material. Also, pursuant to the SSI Protective Order, the parties and the BOP agreed that any Source Selection Information submitted to the Court in connection with a motion shall be filed under seal. *See* SSI Protective Order ¶ 6. Defendants respectfully request that the Court maintain the sealing of this document unless or until the BOP withdraws the Source Selection Information designation.

Conclusion

For the reasons set forth above, Defendants respectfully request that the Court grant this motion and direct the clerk to file under seal (i) the non-redacted version of the Memorandum of Law, and (ii) Exhibits 8, 12 and 14 to the Whitworth Decl.

the head of the agency, his designee or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.” *See* SSI Protective Order ¶ 1.

DATED: November 20, 2020

Respectfully submitted:

/s/ Steven A. Riley

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CERTIFICATE OF SERVICE

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this 20th day of November, 2020.

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